



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission
Date: April 9, 2003

From: Jorge M. Gonzalez
City Manager

Subject: **REPORT OF THE NEIGHBORHOODS COMMITTEE MEETING MARCH 24, 2003**

A meeting of the Neighborhoods Committee was held on March 24, 2003, at 2:00 P.M. in the Manager's Large Conference Room. Commissioners in attendance: Matti Herrera Bower, Simon Cruz, Richard Steinberg, Saul Gross, Luis R. Garcia and Jose Smith. City staff in attendance: Robert C. Middaugh, Assistant City Manager, Vivian P. Guzman, Director, Neighborhood Services Department, Al Childress, Director, Code Compliance Division, Lynn Bernstein, Community Outreach and Resource Manager, Jorge Gomez, Director, Planning Department and Commission Aide, Erica Shafir. Others in attendance included Dr. Morris Sunshine and Mr. Gary Knight.

OLD BUSINESS

1. **Discussion regarding the City's enforcement of the noise ordinance.** Deferred from the February 24, 2003, Neighborhood Committee meeting.

Commissioner Jose Smith began the discussion on this item and explained that his office had received a noise complaint during daytime, evening and early morning hours. The complaint was generated by a resident that lives in Biscayne Park and was having his quality of life affected by the noise generated by parties. Mr. Robert C. Middaugh, Assistant City Manager, explained that the City enforces Miami-Dade County Ordinance 21-28, and if it can be heard at a distance of 100 feet from the building, there is a violation regardless of the time of day.

Mr. Al Childress, Director, Code Compliance Division, explained that his staff works days and the evening hours Thursday through Sunday. Noise violations that occur Monday through Wednesday are enforced by the City of Miami Beach Police Department. Typically, noise complaints are not a priority for police since they also have to address more serious calls that deal with criminal activity. Commissioner Matti Bower was concerned that due to budgetary issues we are unable to protect the quality of life for Miami Beach residents. Commissioner Simon Cruz stated that the Commissioners should have a discussion with the City Manager regarding the feasibility of having code staff work evening hours Monday through Wednesday and verify that the complaints merit additional staff. Mr. Childress explained that the rationale for having staff work a Thursday through Sunday evening shift is based

on the number of complaints received in his office which are generated by the dance clubs that usually open during the weekend.

A discussion ensued, initiated by Dr. Morris Sunshine, regarding the applicability of Miami-Dade County's noise ordinance. Dr. Sunshine reiterated that the noise ordinance is applicable during the day and stated that the problem is with the lack of code compliance staff during Monday through Wednesday evening hours. Additionally, Dr. Sunshine stated that the Conditional Use permit process does not work because code refers the case to the Planning Board and it creates additional work for code. Mr. Gary Knight stated the main problem is the frequency of events that generate the noise. Mr. Knight cited the example of The Creek Hotel and the outdoor events by the pool that have forced him to contact code on numerous occasions. Mr. Knight stated that in order to address the numerous noise complaints, he suggested augmenting the budget of the Code Compliance Division, additional training for the police department in order to understand neighborhood issues and the need for a more stringent enforcement and compliance process.

In closing, Comm. Cruz stated that the City Commission must develop a policy to balance the needs of the residential and business communities. He suggested possibly looking at ways to tie the enforcement action to a business' license.

The Committee did not make a motion on this item.

NEW BUSINESS

2. **Discussion regarding honoring the late Assistant City Attorney Larry Levy for his years of dedication and adoration for our City.** Referred at the February 26, 2003, City Commission meeting.

Commissioner Luis R. Garcia stated that he was contacted by Mr. Levy's widow regarding a memorial for her late husband. According to Mr. Levy's widow, he truly loved the City of Miami Beach. Commissioner Garcia requested suggestions from the Committee members. Commissioner Richard L. Steinberg suggested having the City Attorney's Office implement a summer intern program named after Mr. Levy. The Committee agreed that Commissioner Garcia would speak to Mr. Murray Dubbin, City Attorney, and Mrs. Levy regarding the scholarship and to report back to Neighborhoods Committee regarding the recommendation.

The Committee did not make a motion on this item.

3. **Discussion regarding the Procedural Policy for Noise Violation Enforcement.**

Mr. Robert C. Middaugh, Assistant City Manager, introduced the item and explained that the policy for noise violations establishes a procedure for any business or property that is issued three Notices of Violation during any consecutive 90-day period. If a

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business is issued three Notices of Violations during a 90-day period, it will be immediately referred to the Special Master for a hearing. If a second violation occurred in a 7 day period, an arrest would be made. At the time of the Special Master hearing, all three Notices of Violations will be presented for adjudication before the Special Master and a request for judgment will be made on behalf of the Administration for each of the violations. If a fourth violation is issued during the next 90-day period, the business or property owner shall be immediately noticed for an Occupational License suspension and/or Revocation Hearing. If a fifth Notice of Violation occurs on the 90-day period, a business or property owner shall have their Occupational License suspended pending a suspension and/or revocation hearing.

Commissioner Luis Garcia recommended the possibility of creating a cabaret district instead of adopting the noise ordinance. Commissioner Saul Gross inquired if the Administration had shared the policy with the Nitelife Advisory Committee. Mr. Middaugh stated that the policy was presented to the Nitelife Advisory Committee and most thought the policy was too strict.

Mr. Gary Knight proposed a two-track process in which the operator and property owner would be cited for violating the noise ordinance. Dr. Morris Sunshine referred to a case in which the deejay of a club was arrested and feels that the arrest would serve as more of a deterrent than revoking a license.

Commissioner Gross recommended adding a Conditional Use category to the policy which includes losing the C.U. as a result of enforcement action and develop an interim remedy that you lose your right to have outdoor entertainment before you suspend or revoke a license since that is the source of most complaints. Commissioner Richard Steinberg offered an additional suggestion to the noise ordinance to address the issue of multiple continuances of the Special Master hearing process. Commissioner Steinberg stated that preparing for hearings should take approximately 30 days but individuals and entities should not be allowed to have several continuances. Commissioner Steinberg further stated and recommended that if the continuance goes past the 30 days, the establishment must cease and desist outdoor operations.

Mr. Middaugh reiterated the suggestion that business' surrender their outdoor entertainment use for three violations until the Special Master hearing. Commissioner Steinberg further suggested that three violations should be for both indoor and outdoor establishments.

The Committee unanimously approved a motion to approve the policy and to make the following changes to the policy for violation enforcement: If Special Master Hearing continuances go past 30 days, the business must cease and desist outdoor operations that are the source of the pending violation until such time as the matter is heard by the Special master and that the Occupational License ordinance and/or issuance be amended to reflect cessation of use pending the outcome of the Special Master hearing.

Additionally, the

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Administration will make the recommended changes to the policy and take the revised policy to a workshop with residents and businesses to gather input on the policy.

4. Discussion regarding the proposed Charter for the City Regulatory Review Committee.

Mr. Robert C. Middaugh, Assistant City Manager, introduced the item and explained that Commissioner Richard L. Steinberg has referred this item to Neighborhoods Committee and instructed the Administration to develop guidelines for the Committee. The Charter describes the composition of the Committee as well as the guidelines. Commissioner Matti Bower suggested that the Mayor and Commissioners each have two appointments and that would make the process much more inclusive. Commissioner Steinberg suggested that the two appointments be one resident and one person representing the business community from each commissioner.

The Committee unanimously passed a motion approving the Guidelines of the City Regulatory Review Committee and amending the composition of the Committee by having the Mayor and City Commissioners appoint two members each to serve, one resident and one person representing the business community, for a total of 14 Committee members.

JMG/RCM/VP